

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;  
Mark Acton, Vice Chairman;  
Tony Hammond; and  
Nanci E. Langley

Competitive Product Prices  
First-Class Package Service  
First-Class Package Service Contract 74

Docket No. MC2017-96

Competitive Product Prices  
First-Class Package Service Contract 74  
(MC2017-96)  
Negotiated Service Agreement

Docket No. CP2017-136

ORDER ADDING FIRST-CLASS PACKAGE SERVICE CONTRACT 74  
TO THE COMPETITIVE PRODUCT LIST

(Issued March 28, 2017)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as First-Class Package Service Contract 74 to the competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

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<sup>1</sup> Request of the United States Postal Service to Add First-Class Package Service Contract 74 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, March 15, 2017 (Request).

## II. BACKGROUND

On March 15, 2017, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that First-Class Package Service Contract 74 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.<sup>2</sup>

The contract is intended to take effect two business days following the day on which the Commission issues all necessary regulatory approval. Request, Attachment B at 4. It is set to expire three years from the effective date. *Id.*

On March 16, 2017, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>3</sup>

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<sup>2</sup> In its application for non-public treatment of materials, the Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 1, 7. The Commission has consistently denied similar requests for indefinite protection. See, e.g., Docket Nos. MC2011-1 and CP2011-2, Order No. 563, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7.

<sup>3</sup> See Docket No. CP2017-133, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, March 16, 2017.

On March 21, 2017, Chairman's Information Request No. 1 was issued.<sup>4</sup> The Postal Service filed a response on March 22, 2017.<sup>5</sup> In CHIR No. 1, the Chairman sought to confirm that the undefined party "vendor" referred to the Postal Service, and that the Postal Service had determined that the costs of its assumption of liability under Article X of the contract were *de minimis*. CHIR No. 1, questions 1, 2. The Postal Service provided confirmation for both. See Responses to CHIR No. 1.

### III. COMMENTS

The Public Representative filed comments on March 24, 2017.<sup>6</sup> No other interested person filed comments. The Public Representative concludes that First-Class Package Service Contract 74 meets the statutory requirements to be classified as a new competitive product. PR Comments at 2. Having reviewed the financial model filed under seal, she further concludes that the contract should generate enough revenue to cover its costs during the first year of the contract, in compliance with section 3633(a). *Id.* She notes that the Postal Service provides no evidence that the contract will comply with the requirements of section 3633(a) during the second and third years of the contract, but that this concern is largely mitigated by the fact that the contract includes a provision for annual adjustment of prices in its second and third years. *Id.* In addition, she states that the Commission will have an opportunity to review the contract's compliance in its Annual Compliance Determination (ACD). *Id.*

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<sup>4</sup> Chairman's Information Request No. 1, March 21, 2017 (CHIR No. 1).

<sup>5</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1, March 22, 2017 (Responses to CHIR No. 1).

<sup>6</sup> Public Representative Comments on Postal Service Request to Add First-Class Package Service Contract 74 to the Competitive Product List, March 24, 2017 (PR Comments).

#### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, the Responses to CHIR No. 1, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning First-Class Package Service Contract 74 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The

availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the First-Class Package Service Contract 74 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that First-Class Package Service Contract 74 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds First-Class Package Service Contract 74 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the contract exceeds its attributable costs, the contract is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The contract contains an unusual assumption of liability on the part of the Postal Service in Article X. See Request, Attachment B at 6. In its Responses to CHIR No. 1, the Postal Service confirmed that it had determined that the costs of this assumption of liability were *de minimis*, and justified that determination on the grounds that the limited nature of the shipping services agreement made liability under Article X highly unlikely. See Responses to CHIR No. 1, question 2. This justification is reasonable.

The Commission notes that liability arising under a contract affects cost coverage. The potential cost of the assumption of liability in this particular contract may reasonably be considered *de minimis* in advance, but broader assumptions of liability on the part of the Postal Service in future contracts may require more detailed analysis.

Further, if the Postal Service does realize a liability cost for this contract, the Postal Service will provide that data as part of its Annual Compliance Report.

Based on a review of the record, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). The contract contains a price adjustment provision that adjusts contract rates during subsequent contract years. Request, Attachment B at 3. The contract's price adjustments should not impact the likelihood that the rates will cover attributable costs during the subsequent contract years because the cost coverage is sufficiently high in the first year. For these reasons, the Commission also finds that the contract should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds the contract is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See also 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the contract indicates it is consistent with section 3633(a).

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Other considerations.* By its terms, the contract becomes effective two business days after the date that the Commission issues all necessary regulatory approval. Request, Attachment B at 4. The contract is scheduled to expire three years from the effective date, unless, among other things, either party terminates the contract with 30 days' written notice to the other party or it is renewed by mutual agreement.<sup>7</sup>

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<sup>7</sup> *Id.* Should both parties agree to renew the contract, any such renewal is required to follow the requirements of 39 U.S.C. § 3633 and the Commission's implementing regulations of 39 C.F.R. part 3015.

The contract also contains a provision that allows the parties to extend the contract for two 90-day periods if a successor agreement is being prepared and the Commission is notified within at least seven days of the contract expiring.<sup>8</sup> During the extension periods, prices will be adjusted as described in the contract. Request, Attachment B at 4. The Commission finds the two potential 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves First-Class Package Service Contract 74 as a new product. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

## V. ORDERING PARAGRAPHS

*It is ordered:*

1. First-Class Package Service Contract 74 (MC2017-96 and CP2017-136) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail

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<sup>8</sup> *Id.* Notwithstanding the wording of the contract, it is the Commission's understanding that the Postal Service intends to provide notice of an extension at least one week prior to a contract's expiration. Advance notice of at least one week is consistent with the standard set forth in Order No. 1773. Docket Nos. MC2013-54 and CP2013-70, Order No. 1773, Order Adding Priority Mail Contract 60 to the Competitive Product List, July 8, 2013, at 3; *see also* Docket Nos. MC2013-54 and CP2013-70, Response of the United States Postal Service to Chairman's Information Request No. 1, July 1, 2013, question 2; Docket No. CP2009-38, Order No. 1523, Order Granting Motion for Temporary Relief and Providing Guidance Regarding Future Motions for Temporary Relief, November 1, 2012, at 2.

Classification Schedule appear below the signature of this Order and are effective immediately.

2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.
3. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble  
Secretary



## CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission's order in Docket Nos. MC2017-96 and CP2017-136. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### **Appendix B to Subpart A of Part 3020—Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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First-Class Package Service Contract 74

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## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### **Part B—Competitive Products** **2000 Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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First-Class Package Service Contract 74

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#### **2500 Negotiated Service Agreements**

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#### **2505 Domestic**

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#### **2505.10 First-Class Package Service Contracts**

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- First-Class Package Service Contract 74

#### Baseline Reference

Docket Nos. MC2017-96 and CP2017-136

PRC Order No. 3833, March 28, 2017

#### Included Agreements

CP2017-136, expires March 29, 2020

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